IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 887 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RATNAJI BIJOLJI THAKORE - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR PM VYAS for Appellant(s) : 1,
MR PRADIP D BHATE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 26/04/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be tried and convicted by Sessions Court, Banaskantha in Sessions Case No.91 of 1993 for the offence of murder of Lilaben – wife of Babuji Hathiji Thakore allegedly committed on 14th June, 1993 around 9.00 a.m. in the outskirts of village Sambarda by giving axe blows on the neck.

2. The prosecution case is that the appellant and deceased Lilaben are neighbours. Lilaben's son Meruji Babuji was working under the appellant and they had some dispute about outstanding remuneration receivable by Meruji Babuji. In recent past also, there was an altercation. On the day of the incident, Meruji, while standing at his own house, made demand from the appellant about his due remuneration of Rs.210/-. This annoyed the appellant and he started giving abuses resulting into an altercation between the two. Mother of Meruji – Lilaben, on hearing the altercation, went to the spot and tried to intervene by trying to pacify the appellant who was already armed with an axe. This further annoyed the appellant and allegedly, he gave two blows with the hind portion of the axe on the neck of deceased Lilaben as a result of which she fell down. Hearing the hubbub, Harchandji Ramaji, Geetaben Babubhai and Vashramji Babuji came to the place. The appellant went to his house alongwith the axe and the deceased was taken to the hospital. She was given some treatment but during the course of treatment, she succumbed to the injuries around 4.30 p.m. Initially, information was given to the police

about quarrel by the doctor followed by an F.I.R given by Meruji Babuji. The investigating agency collected the evidence and having found sufficient evidence, filed chargesheet in the Court of Chief Judicial Magistrate, Banaskantha at Palanpur who, in turn, committed the case to the Court of Sessions and Sessions Case No.91 of 1993 came to be registered.

2.1 Charge against the accused was framed at Exh.3 for the offences punishable under Section 302 and 504 of I.P.C. as well as Section 135 of Bombay Police Act. The accused pleaded not guilty to the charge and claimed to be tried. The Trial Court, after considering the evidence led by the prosecution, came to the conclusion that the prosecution was successful in establishing charge of murder punishable under Section 302 of I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo S.I. for three months by judgment dated 31st August, 1994. Aggrieved by the said judgment and order, the present appeal is preferred by the original accused. The Trial Court, however, concluded that the evidence was not sufficient to convict the appellant of offences punishable under Section 504 of I.P.C. and Section 135 of Bombay Police Act. That part of conclusion of the Trial Court is not challenged by the State.

3. We have heard learned advocate Mr. P.M. Vyas for the appellant and learned APP Mr. Bhate for the respondent – State. We have also examined the record

and proceedings in context of the submissions made by learned advocate as well as learned APP.

4. Learned advocate Mr. Vyas submitted that even if the prosecution case is taken as it is ignoring the discrepancies found in the depositions of the eye-witnesses, the case cannot fall under the category of an offence punishable under Section 302 of I.P.C. Undisputedly, as per the prosecution case, the dispute was between the appellant and Meruji Babuji (p.w.3) and they were quarreling. Nobody could have anticipated arrival of deceased Lilaben on the spot. She, however, hearing the hubbub, went to the spot and tried to intervene. It has also come in evidence that the altercation between the appellant and Meruji had gathered momentum, heat was generated and had resulted into a sudden quarrel and in that process while the deceased tried to intervene, she suffered injuries on her neck. Mr. Vyas submitted that although the eye-witnesses speak about two blows given by the appellant to the deceased, the medical evidence not only does not support this version of two blows but negatives the same. Mr. Vyas, therefore, submitted that only one blow was received by the deceased which has unfortunately resulted into her death even as per the prosecution case. Mr. Vyas, therefore, submitted that arrival of the deceased on the spot was coincidental and in heat of the moment, the incident appears to have occurred. Therefore, there cannot be an intention to commit murder of deceased Lilaben on part of the appellant.

According to Mr. Vyas, the case, at the most, would fall in the category of culpable homicide not amounting to murder for want of intention. He, therefore, submitted that if the court is not impressed by the discrepancies in the depositions of the eye-witnesses, the court may alter the conviction to a lesser offence i.e. culpable homicide not amounting to murder.

4.1 Mr. Vyas submitted further that the injury was caused with the back of an axe and, therefore, there cannot be any intention to cause murder of the deceased. Mr. Vyas submitted that the appellant was convicted by judgment and order dated 14th June, 1993. He was arrested on the day of incident and was produced before the Magisterial Court on 15th June, 1993. Since then, the appellant was in jail till this court, by order dated 21st December, 2001, granted bail to the applicant till final disposal of the appeal and as such, the appellant has undergone a sentence of about 8½ years. Mr. Vyas submitted that if the court is satisfied that this is not a case of murder, the conviction may be appropriately altered and minimum punishment be awarded.

4.2 Mr. Vyas submitted that if depositions of eye-witnesses are seen, there are discrepancies and disharmony in their depositions. The version emerging from these witnesses differs as to how the incident occurred and in what consequence the incident occurred. He also submitted that although

the eye-witnesses say that two blows were given by the appellant on the neck of the deceased, the evidence of the doctor indicates that the injury on neck was of such a nature that it would be caused by a single blow. Mr. Vyas submitted further that if the intention of the appellant was to cause murder, his dispute was with Meruji. Meruji was unarmed as against the appellant being armed with an axe and still the appellant has not committed any assault on him. Likewise, the blow is given with back of the axe. If the intention was to commit murder, the blow would have been given with blade of an axe. Mr. Vyas also submitted that this is not a case where the accused can be said to have caused multiple blows with intention or with knowledge that by such act of his, death is likely to occur of the victim. He has drawn our attention to the fact that Harchandji Ramaji (p.w.2) (Exh.14) has not supported the prosecution case and has been declared as a witness hostile to the prosecution. The evidence of Dr. Jitendrabhai Mithabhai (Exh.32) would clearly indicate as to how the authorities have acted. The doctor has not informed the police for a long time which he ought to have done and, therefore, Mr. Vyas submitted that the appellant's conviction may be set aside by setting aside the judgment rendered by the Sessions Court.

5. Learned APP Mr. Bhate has opposed this appeal. According to him, the Trial Court has appreciated the evidence and has ultimately come to

the conclusion that the prosecution was successful in proving the charges against the appellant and has awarded imprisonment for life and a fine of Rs.5,000/-, in default, S.I. for three months which is just, legal and proper.

5.1 The incident has occurred at 9.00 a.m. in front of the house of the deceased. The incident was seen by Kishanbhai Ramjibhai Solanki (Exh.8), Harchandji Ramaji (Exh.14), Meruji Babuji (Exh.16), Geetaben Babubhai (Exh.18) and Vashramji Babuji (Exh.19). These pieces of evidence, though they contain certain discrepancies or contradictions, inspire confidence and the discrepancies may be ignored. Mr. Bhate submitted that when there is clear evidence of eye-witnesses that the appellant gave two blows on the neck of the deceased, when there is no dispute about identity of the assailants, when the incident has occurred in the early morning hours when there is sufficient light, the minor discrepancies would lose their significance. Mr. Bhate, therefore, submitted that the appeal may be dismissed confirming the judgment of the Trial Court.

6. On perusal of the record, it is found that the important medical evidence is in form of post-mortem notes (Exh.13) and deposition of Dr. Kishanbhai Ramjibhai Solanki (Exh.8). The eye-witnesses are Harchandji Ramaji (Exh.14), Meruji Babuji (Exh.16), Geetaben Babubhai (Exh.18) and Vashramji Babuji (Exh.19). From the evidence of

these witnesses, it becomes very clear that Meruji demanded money from the appellant which annoyed the appellant. There was an altercation or a quarrel between the two. At that time, the appellant was armed with an axe but he has not used it. However, soon thereafter, while the quarrel was going on, the deceased enters the scene and tries to intervene. In doing so, she is caused injuries on neck by the appellant with the hind portion of the axe. The witnesses speak of the appellant having given two blows on the neck of the deceased.

7. However, if the evidence of doctor is seen, he states that initially, treatment was given to the deceased and that post-mortem was performed by him. He describes the injuries noticed by him while performing post-mortem. The injuries were ante-mortem and were sufficient in ordinary course of nature to cause death.

7.1 The witness is cross-examined at length by the defence. He states that the injury on the neck was only one. He has admitted that the injuries found on C-3 to C-5 were the outcome of such blows. He denies the suggestion that the injuries found on person of the deceased were possible by a fall on a hook designed to tie cattle.

8. The evidence of eye-witnesses Harchandji Ramaji, Meruji Babuji, Geetaben Babubhai and Vashramji Babuji are relevant. We have gone through

the evidence and we find that all the witnesses consistently say that the appellant and Meruji were quarreling and on intervention by the deceased, she was given a fatal blow. It has come in evidence that the deceased was suffering from epilepsy. He denies the suggestion that the deceased suffered injury because of fall. It has also come in evidence that the appellant was further annoyed because of intervention by the deceased and inflicted the blow. During cross-examination of Harchandji, it transpires that Vashram was not present. He had gone to school. This witness has been treated as hostile to the prosecution.

8.1 P.W.3 – Meruji Babuji, p.w.4 – Geetaben Babujbhai and p.w.5 - Vashramji Babuji have also deposed that there was a quarrel between Meruji Babuji and the appellant and on intervention by the deceased, the appellant gave two axe blows on the neck of the deceased with the hind portion of the axe and caused severe injury to the deceased. From the post-mortem notes, what was noticed by the doctor was swelling, reddish-bluish in colour on the nape (back of the neck). There were fractures of cervical vertebrae C-4 and C-5 and fracture of C-4 and C-3. We have perused these depositions closely and find that they are consistent with each other barring few discrepancies which are vehemently pointed out to us by learned advocate Mr. Vyas. In our opinion, those discrepancies do not go to the root of the case nor do they affect the veracity of the evidence of the

witnesses and we are, therefore, inclined to accept the evidence of these witnesses.

9. We notice that though the witnesses have consistently said that two blows were given by the appellant to the deceased on her neck, the doctor has indicated that the injuries found on the neck were possible only by one blow. The doctor has even admitted to the fact that if two or more blows were given on the same spot, it would have resulted into much graver injury to the deceased which is not the case.

10. Now, therefore, these aspects have to be viewed to answer the question as to whether there was an intention on the part of the appellant to cause murder of Lilaben or whether the case would fall under any of the exceptions.

10.1 When the quarrel was between the appellant and Meruji and when it had started, the deceased was not even present at the place of incident and when the injury is caused on her intervention, it is difficult to accept and conclude that there was intention on part of the appellant to cause murder of deceased Lilaben. In our view, intention of causing murder of Meruji also cannot be read because though there was quarrel, though Meruji was unarmed, though the appellant had axe in his hand, he has not caused any injury though he had a dispute with Meruji. Therefore, there cannot be any second opinion for the

view that the appellant had no intention to commit murder of Lilaben. The fact is that upon intervention by the deceased, a blow is given with the hind portion of the axe. If there was any intention to commit murder, the appellant would have used the front portion of the axe. In fact, he has used the hind portion of the axe. He has given only one blow and has stopped there and has not continued to give blows repeatedly. Therefore, there was no intention on part of the appellant to commit murder. It has come in evidence of these witnesses that Meruji demanded his wage amount of Rs.210/- from the appellant which annoyed the appellant and there was a quarrel between the two and on hearing the quarrel, the deceased went to the spot. As such, the incident has occurred without pre-meditation and in a sudden fight, in the heat of passion upon a sudden quarrel. It cannot be said that the accused had taken undue advantage of the situation and acted in a cruel or unusual manner. The case, therefore, in our opinion, would fall under Exception 4 to Section 300 and would be covered by Section 304 rather than Section 302 of I.P.C.

11. In light of the above, we are of the view that involvement of the appellant in the incident is proved by the prosecution but the evidence does not prove the case of murder against the appellant. The case would fall in the category of culpable homicide not amounting to murder as Exception 4 to Section 300 is attracted in our view. We, therefore, set aside

the conviction of the appellant for the offence of murder of Lilaben – wife of Babuji Hathiji Thakore and alter it to a conviction for the offence of culpable homicide not amounting to murder punishable under Section 304 Part II of I.P.C. as knowledge on part of the appellant can certainly be inferred.

12. The appeal is accordingly partly allowed. The conviction of the appellant is altered from one under Section 302 of I.P.C. to one under Section 304 Part II of I.P.C.

13. As discussed earlier, undisputedly, the appellant was in jail since 14th June, 1993 till he is released on bail by order dated 21st December, 2001 passed by this court in Criminal Miscellaneous Application No.8994 of 2001 which would cover a span of nearly 8½ years. We, therefore, while convicting the appellant for the offence of culpable homicide not amounting to murder, sentence him to an imprisonment for the period already undergone by him. Since the appellant is on bail, his bail bond shall stand cancelled.

(A.L. Dave, J.)

(Sharad D. Dave, J.)

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